

said sleeve has a cross-section in a plane which is substantially perpendicular to the longitudinal axis, which cross-section has a curved peripheral edge.

52. (New) An improved device for stabilizing a spinous process relative to another spinous process, said device being of the type which is implanted between the spinous process and another spinous process, wherein said improvement comprises:  
a sleeve rotatable about a central axis, which sleeve and central axis are located between the spinous processes.

### Remarks

In the parent for this continuation, an office action was issued concerning the above claims. These remarks will address that office action as it applies to the claims presently in this case.

First, as there was a restriction requirement in the parent case, Applicant wishes to specify that the current species for examination is found in Figs. 119a-124c. Applicant believes that all present claims are properly related to that species. By way of example, with respect to claim 13, the sleeve in that species can be made repeatably deflectable. For example, this sleeve could be made of super elastic material such as found in claim 12.

With respect to claim 17, it is submitted that this limitation is related to the species. For example, the member with a shape with a preferred orientation is the sleeve in, for example, the shape of an oval which has a preferred orientation with respect to the adjacent spinous processes.

Additionally, for example with respect to claim 10, the sleeve in the species rotates about the central body and the sleeve can be close to or spaced from the central body.

Additionally, reviewing claim 31, this claim includes a second wing and the species of the figures can include a second wing as for example shown in Fig. 120a.

Claims 8 and 21 are rejected under 35 U.S.C. §112. It is submitted that the above amendment cures this rejection.

Claims 15, 16, 18, 21 and 22 are rejected under 35 U.S.C. §102 as being anticipated by Samani. Claim 15 has been amended to recite that the second means includes a sleeve rotatable about an axis. Claim 18 has been amended to recite that the second member is rotatable about said axis. It is submitted that as Samani does not have a rotatable sleeve or a rotatable second member, it is no longer applicable to claims 15 and 18 and that these claims are allowable. It is further submitted that the claims dependent

from either claim 15 or claim 18 are allowable for at least the reasons that claim 15 and claim 18 are respectively allowable.

Claims 1, 2, 7-9, 11 and 44 are rejected under 35 U.S.C. §102 as being anticipated by Saggari. Saggari discloses essentially a turn buckle with a medial, nut-form, tool engageable portion 14 (i.e., basically a nut). The turn buckle of Saggari includes a threaded shaft 13 upon which is mounted threaded members 2 and 3 which has extending from distal ends thereof teeth 9. The turn buckle or prosthetic device of Saggari is meant to fit between vertebral bodies in a spine not between spinous processes as is the present invention. The device of Saggari is also meant to incorporate therein bone chips or bone fragments in order to promote the fusion of one vertebral body to the next. The present invention is meant to allow freedom of movement between the spinous processes while limiting extension. There is no intention that the present invention is meant to allow fusion of vertebral bodies by allowing the bone from the vertebral bodies to grow a device as taught by Saggari.

With the prosthetic of Saggari positioned between vertebral bodies, the turn buckle is turned in order to drive the teeth into the upper and lower vertebral bodies securing the device in place. Over time, bone from the vertebral bodies grow through the prosthetic device of Saggari in order to fuse the vertebral body and immobilize that portion of the spine. Thus, the device of Saggari is entirely different from the present invention having a different purpose and a different function.

The office action specifically points out that nut 14 could be a first wing. However, nut 14 is simply that, a nut, and as such, could slip through the space between spinous processes. Thus, the nut 14 does not serve the function of the first wing of the present invention.

With respect to the device of Saggari, this is a device to be used to distract apart and fuse vertebral bodies. It is not meant to be positioned between spinous processes in order to limit extension and also assist in the positioning of the device relative to the spinous processes. Accordingly, it is submitted that Saggari is not relevant to the present invention as it is a device for an entirely different purpose and as the elements cited in the office action will not serve the function of the elements of the present invention as indicated above. Accordingly, it is submitted that all the above claims are allowable.

On page 9 of the office action, the Examiner states that Applicant in some manner asserts that it will be obvious to use super elastic material for purposes of the sleeve. In fact, Applicant's reference on page 59 with respect to titanium and also with respect to

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super elastic materials is made with respect to the other embodiments of the application as stated on lines 24 and 25 of page 49. Applicant in no way meant that prior art made it obvious to use titanium or a super elastic material with the various components described with respect to the present invention. In particular, with respect to super elastic material, as pointed out in the specification, novelty resides in the use of this material for the sleeve as specified by way of example only on pages 43 through 51.


A certificate of mailing is affixed hereto in accordance with 37 C.F.R. §1.8(a).

Any additional fees due for this case can be charged toward our Deposit Account #06-1325.

Continued examination and allowance of the above case is requested.

Respectfully submitted,

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